**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR**

**FRIDAY, THE 2ND NOVEMBER 2007 / 11TH KARTHIKA 1929**

**WP(C).No. 3751 of 2005(V)**
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**PETITIONER:**
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**I.JAITHOON, FULL TIME ARABIC TEACHER,**
**A.U.P.SCHOOL APPUPILLAYUR, ERATTUKULAM,**
**PALAKKAD DISTRICT.**

**BY ADV. SRI.P.K.SURESH KUMAR**
**SRI.K.P.SUDHEER**

**RESPONDENTS:**
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**1. THE STATE OF KERALA, REP. BY ITS**
**SECRETARY, DEPARTMENT OF EDUCATION,**
**THIRUVANANTHAPURAM.**

**2. THE JOINT DIRECTOR OF PUBLIC INSTRUCTION**
**THIRUVANANTHAPURAM.**

**3. THE DEPUTY DIRECTOR OF EDUCATION,**
**PALAKKAD.**

**4. THE ASSISTANT EDUCATIONAL OFFICER,**
**CHITTUR, PALAKKAD DISTRICT.**

**5. MANAGER, A.U.P.SCHOOL APPUPILLAYUR,**
**ERATTUKULAM, PALAKKAD DISTRICT.**

**BY GOVERNMENT PLEADER SRI. R. LAKSHMI NARAYANAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 02/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**WP(C) NO: 3751/2005 V**

**APPENDIX**

**PETITIONER'S EXHIBITS**

**EXT.P1. COPY OF THE APPOINTMENT ORDER DT. 9/8/02 TO THE PETITIONER BY THE R5.**

**EXT.P2. COPY OF THE ORDER DT. 3/3/03 BY THE R3.**

**EXT.P3. COPY OF THE ORDER DT. 5/12/03 BY THE R2.**

**EXT.P4. COPY OF THE GO RT NO. 3428/04/G.EDN DT. 6/8/04 BY GOVT. OF KERALA, GENERAL EDUCATION (S) DEPARTMENT.**

**RESPONDENT'S EXHIBITS** **NIL.**

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**K.BALAKRISHNAN NAIR, J.**

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Writ Petition(C) NO.3751 OF 2005-V

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Judgment

The petitioner is an Arabic Teacher in the 5th respondent's School. She was appointed to that post by Ext.P1 order dated 09.08.2002 in the vacancy of Smt.H.Noorjahan, Arabic Teacher, who was promoted as Headmistress. The promotion of Smt.Noorjahan was approved with effect from 01.04.2002.

2. By the staff fixation order for the year 2002-03, the post of Arabic Teacher was abolished and the said order provided that the Arabic periods shall be handled by the Headmistress. The Manager filed an appeal against the said staff fixation order passed by the Assistant Educational Officer before the Deputy Director of Education. In the meantime, even though, there was no vacancy, the petitioner was appointed by Ext.P1 order, in the purported vacancy generated by the promotion of Smt.Noorjahan. The Deputy Director, by Ext.P2 order dated 03.03.2003, dismissed the appeal filed by the Manager. The Manager filed a revision before the Joint Director of Public Instruction. The same was dismissed by Ext.P3 order dated 05.12.2003. The Manager attempted a further revision before the Government, which also stood rejected

by Ext.P4 order dated 06.08.2004. So, this Writ Petition was filed, challenging Exts.P3, P4 and P5 and also praying to approve the petitioner's appointment made as per Ext.P1.

3. The petitioner's appointment was remaining unapproved for want of sanctioned post as per the staff fixation order. The authorities including the Government rejected the approval of appointment of the petitioner for the reason that Smt.Noorjahan was not converted as UPSA before her promotion. If she was converted and thereafter promoted, then while working as Headmistress, she could handle classes for the particular class division from which she was promoted. Since there was no conversion, she has to take classes for Arabic and the independent Arabic post is abolished consequent to her promotion. When a UPSA is promoted as Headmaster, there will be no resultant vacancy of UPSA as the said post will be abolished and the Headmaster will be in charge of that class division. In this case, the authorities noticed that during the academic year 2002-03, there was a reduction of two posts of UPSAs. One of the teachers was granted protection under the

relevant GO issued by the Government and another teacher was retrenched. The authorities also noticed that if the post of Arabic teacher is sanctioned, the Headmaster and the new teacher will have to handle Arabic classes. There will be waste of public money by maintaining two teachers for the periods sufficient for one teacher. On the above grounds, the challenge against the staff fixation order was repelled by the authorities.

4. The learned counsel for the petitioner relied on Rule 5 of Chapter XXIII KER and submitted that whenever a UPSA is promoted as Headmaster, one post of UPSA has to be reduced. He also relied on Sub-rule (2) of Rule 2A of the KER, which deals with the sanction of Arabic teacher in lower primary schools. But, in fact, the rule applicable for sanctioning a post of Arabic teacher in the UP School is Rule 6C, which provides for sanctioning a post provided there are not less than 30 students for Arabic. According to the learned counsel for the petitioner, with the promotion of Smt.Noorjahan as Headmistress, one post of UPSA should have been reduced and the Headmistress should have been allowed to work in that post and the post of Arabic Teacher should have been maintained as per the staff fixation order.

The learned Government Pleader on the other hand pointed out that because of the reduction of posts of UPSA, one UPSA was already retrenched. If one more post is reduced, to accommodate the Headmistress, then, there will be further retrenchment.

5. If Smt.Noorjahan was converted as UPSA, then, one of the juniormost UPSAs will have to be retrenched to accommodate her and also for keeping that post vacant with her promotion as Headmistress. So, in order to accommodate the existing UPSAs, the staff fixation order abolished the post of Arabic Teacher with a stipulation that the Headmistress shall take classes in the place of the Arabic Teacher. I feel that having regard to the facts of the case, the decision taken by the Assistant Educational Officer in the staff fixation order or by the other superior authorities, affirming the same cannot be said to be illegal, warranting interference by this Court. The existing teachers cannot be ordered to be retrenched to bring in a new Arabic teacher. The interest of the students was safe-guarded in the staff fixation order, by abolishing the post of Arabic Teacher and the provision made therein that the Headmistress shall take

classes for Arabic. In view of the above position, I find nothing illegal with the impugned orders to be interfered with under Article 226 of the Constitution of India. Accordingly, the Writ Petition fails and it is dismissed.

02.11.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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